

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE:  
GENERAL MOTORS LLC IGNITION SWITCH LITIGATION

14-MD-2543 (JMF)

*This Document Relates to All Actions*

**APPLICATION OF BERGER & MONTAGUE, P.C. FOR APPOINTMENT TO  
THE EXECUTIVE COMMITTEE OF PLAINTIFFS' COUNSEL**

Pursuant to the Court's Order No. 5, Berger & Montague, P.C. ("B&M"), counsel to Plaintiff in *Nicole Salerno v. General Motors LLC, et al.*, No. 2:14-cv-02132 (E.D. Pa.), respectfully requests appointment to the ten member Executive Committee of Plaintiffs' Counsel. B&M is highly qualified to serve, with over 50 attorneys dedicated to representing plaintiffs in class action litigation. Over forty years ago, B&M pioneered the use of class actions in antitrust and securities litigation, and has expanded the use of class actions in consumer, employment, environmental, and insurance litigation. Our attorneys are repeatedly recognized by federal and state courts, national legal ratings agencies such as Chambers & Partners and Martindale-Hubbell, and legal publications, including The National Law Journal, which has named B&M to its "Hot List" of top plaintiffs' firms in the United States ten times between 2003 and 2013. *Twice*, B&M has won The Public Justice Foundation's "Trial Lawyer of the Year" award, for actually taking class action cases to trial, and winning huge verdicts.

Sherrie R. Savett, a Managing Shareholder of B&M, and Chair of the firm's Securities Fraud and *Qui Tam* groups, is the senior B&M attorney handling this case. Ms. Savett was named a "Pennsylvania Top 50 Female Super Lawyer" by Philadelphia Magazine (2004 - 2009), as well as a Pennsylvania Super Lawyer (2004 - 2014), and she would bring gender diversity to the Executive Committee. Ms. Savett is active in community affairs, and is currently serving as President of The Jewish Federation of Greater Philadelphia. Many of her significant settlements are detailed below.

**A. B&M Has Extensive Knowledge And Experience In Prosecuting Class Actions**

B&M is one of the largest and most successful plaintiffs' class action law firms, particularly in the field of complex consumer class actions. In the past six years alone, B&M has secured substantial settlements in numerous consumer actions, including MDLs. *See, e.g., In re TJX Cos. Retail Security Breach Litig.*, MDL No. 1838 (D. Mass.) (B&M appointed co-lead counsel in a consumer class action arising from what was then the largest data theft case in history and obtained a settlement valued at over **\$200 million**); *Casey v. Citibank, N.A.*, No. 5:12-cv-820 (N.D.N.Y.) (B&M appointed co-lead counsel on behalf of a nationwide class of borrowers concerning lender-placed insurance and obtained

a settlement valued at over **\$122 million** that has been preliminarily approved); *In Re: CertainTeed Fiber Cement Siding Litig.*, MDL No. 2270 (E.D. Pa.) (B&M appointed co-lead counsel on behalf of a nationwide class of consumers who purchased defective siding and obtained a **\$103.9 million** settlement); *Arnett v. Bank of America, N.A.*, No. 11-cv-1372 (D. Or.) (B&M appointed co-lead counsel in lender-placed flood insurance case and obtained **\$31 million** settlement that has been preliminarily approved); *In re Pet Foods Product Liab. Litig.*, MDL No. 1850 (D.N.J.) (B&M appointed co-lead counsel in an MDL consumer class action concerning contaminated pet food and obtained a **\$24 million** settlement providing class members up to 100% of their economic damages).

B&M is experienced in the area of consumer class actions involving automotive defects. *See, e.g., Eagen v. American Honda Motor Co. Inc.*, 3:12-cv-01377-SI (N.D. Cal. 2014) (B&M obtained a settlement valued over \$40 million; 3 year extension of warranty and reimbursement for prior repairs of engine misfiring defect); *In re Volkswagen and Audi Warranty Extension Litig.*, MDL No. 1790 (D. Mass.) (B&M, as co-lead counsel, obtained a settlement that applied to 479,768 vehicles with an alleged engine design defect); *Burgo v. Volkswagen of America, Inc. d/b/a Audi of America, Inc.*, No. HUD-L-2392-01 (N.J. Sup. Ct.) (B&M, as co-lead counsel on behalf of a nationwide class, alleged that defendants' tires were defective, and obtained a class settlement providing reimbursements for tires and replacement of tires); and *Parker v. American Isuzu Motors, Inc.*, Sept. Term 2003, No. 3476 (Ct. Com. Pleas, Phila. Cty.) (B&M, as lead counsel, obtained a settlement providing class members up to \$500 each for economic damages due to faulty brakes).

B&M's representation of consumers and businesses in antitrust class actions, including MDLs, also strongly supports its appointment to the Executive Committee. *See, e.g., In Re Payment Card Interchange Fee & Merchant Discount Antitrust Litig.*, MDL-1720 (E.D.N.Y.) (B&M, as co-lead counsel, obtained a **\$7.25 billion** settlement, the largest antitrust settlement in history, revised to \$5.7 billion after opt-outs); *In re Titanium Dioxide Antitrust Litig.*, No. 1:10-cv-00318-RDB (D.Md.) (**\$163.5 million** in settlements); *In re Currency Conversion Fee Antitrust Litig.*, No. 01-md-01409

(S.D.N.Y.) (**\$336 million** settlement); *In re Tricor Antitrust Litig.*, No. 05-340 (D. Del.) (**\$250 million** settlement); *In re High Fructose Corn Syrup Antitrust Litig.*, MDL No. 1087 (C.D. Ill.) (**\$531 million** settlement on eve of trial); and *In re Brand Name Prescription Drugs Antitrust Litig.*, No. 94 C 897 (N.D. Ill.) (**\$717 million** settlement).

Likewise, B&M's successful representation of shareholders in securities fraud class actions also supports its appointment to the Executive Committee. *See, e.g., MF Global, Inc.*, No. 11-cv-7866 (S.D.N.Y.) (former customers will recover 100% of their \$1.6 billion in net equity claims); *Merrill Lynch Sec. Litig.*, No. 07-cv-09633 (S.D.N.Y.) (**\$475 million** settlement); *Rite Aid Corp. Secs. Litig.*, No. 99-cv-1349 (E.D. Pa.) (**\$334 million** settlement); *Waste Management*, No. 97-cv-7709 (N.D. Ill.) (**\$220 million** settlement); *Ikon Office Solutions Inc. Secs. Litig.*, MDL No. 1318 (E.D. Pa.) (**\$111 million** settlement); *In the Matter of the Philadelphia Stock Exchange, Inc.*, 945 A.2d 1123 (2008) (**\$99 million** settlement); *Fleming Cos.*, MDL 1530 (E.D. Tex.) (**\$94 million** settlement); *Cigna Corp.*, No. 2:02-cv-8088 (E.D. Pa.) (**\$93 million** settlement); and *Oppenheimer Rochester Funds Group Sec. Litig.*, No. 09-md-02063 (D. Colo.) (**\$89.5 million** settlement).

The above cases are a small fraction of the substantial class action settlements and judgments B&M has secured. If appointed to the Executive Committee, B&M will bring a wealth of knowledge and experience that will assist Co-Lead Counsel and benefit Plaintiffs and the proposed Classes.

**B. B&M is Willing and Able to Commit the Necessary Time and Resources to Prosecute this Case to a Successful Conclusion**

B&M has already performed considerable substantive work, while drafting complaints, filing a responsive brief with the J.P.M.L., attending in-person and telephonic meetings of plaintiffs' counsel, and attending the J.P.M.L. hearing. If appointed to the Executive Committee, our firm will perform all duties assigned by Co-Lead Counsel and will commit the personnel that are necessary to assure Plaintiffs and the Classes are properly represented.

Our commitment to prosecuting cases through trial is well-documented. *See, e.g., Rocky Flats Nuclear Weapons Plant Litig.* (D. Colo.) (**\$554 million** jury verdict on behalf of thousands of property owners whose homes were exposed to plutonium or other toxins; vacated on appeal); *Melridge Secs. Litig.* (D. Ore.) (four-month jury trial yielded a plaintiffs' verdict for **\$88.2 million** and case settled for **\$58 million**); *Exxon Valdez Oil Spill Litig.* (D. Alaska) (B&M was a principal trial counsel who obtained a jury award of **\$5 billion** in 1994, later reduced to **\$507.5 million** by the Supreme Court). It is important to have firms with trial results like the above cases on the Executive Committee.

**C. B&M Has the Ability to Work Cooperatively With Others**

B&M has excellent working relationships with many of the firms involved here, including Temporary Co-Lead Counsel Hagens Berman Sobol Shapiro, LLP ("HBSS"), and Leiff Cabraser Heimann & Bernstein, LLP ("LCHB"), and has successfully co-counseled with these firms many times. Cases in which B&M has served as co-lead counsel with HBSS include:

- *Clements v. JPMorgan Chase Bank*, No. 3:12-cv-02179-JCS (N.D. Cal.) (\$22.125 million)
- *In re: Skelaxin (Metaxalone) Antitrust Litig.*, MDL No. 2343 (E.D. Tenn.) (\$73 million settlement, final approval pending)
- *In re Wellbutrin XL Antitrust Litig.*, No. 08-2431 (E.D. Pa.) (\$37.5 million partial settlement; litigation is continuing)
- *In re Tremont Securities Law, State Law, and Insurance Litig.*, No. 08-MD-11117 (S.D.N.Y.) (\$100 million settlement in Madoff-related litigation)
- *In re: Metoprolol Succinate Direct Purchaser Antitrust Litig.*, No. 06-052 (D. Del.) (\$20 million settlement)

Cases in which B&M has served as co-lead counsel with LCHB include:

- *Marchbanks Truck Service Inc. v. Comdata Network, Inc.*, No. 07-1078 (E.D. Pa.) (\$130 million settlement)
- *In re Titanium Dioxide Antitrust Litig.*, No. 1:10-cv-00318-RDB (D. Md.) (\$163.5 million in settlements)
- *Meijer v. Abbott Labs.*, No. 07-5985 CW (N.D. Cal.) (\$52 million settlement during trial).

Here, B&M will work cooperatively and constructively with all counsel in this case, as we have, to date, at meetings of plaintiffs' counsel and during conference calls and email exchanges.

**D. B&M Has the Necessary Personnel and Monetary Resources to Successfully Prosecute This Litigation**

B&M is well capitalized and has significant personnel to draw upon, including more than 50 lawyers and 12 paralegals. Our firm also has considerable monetary resources and can assist Co-Lead Counsel in funding this case, where significant costs for discovery and experts are anticipated.

**E. B&M Has Identified, Investigated and Prosecuted Claims in this Case**

Nicole Salerno, a Pennsylvania resident who owns a 2006 Saturn Ion, retained B&M to investigate her claims, and we filed a class action complaint on her behalf in the Eastern District of Pennsylvania on April 11. B&M is also co-counsel in *Ramirez v. GM*, No. 2:14-cv-02344 (C.D. Cal.), and assisted in investigating those claims. B&M has undertaken extensive legal research concerning claims against GM, in particular under Pennsylvania law, and performed research projects related to GM's bankruptcy motion.

**F. B&M Possesses Superior Knowledge of Applicable Law**

As shown above, B&M has 44 years of experience successfully litigating the largest and most complex class action lawsuits, including consumer class actions involving automotive defects.

**G. Geographic Diversity**

Class members from Pennsylvania – a state with more than 12.7 million residents – should be represented by a Pennsylvania law firm. Recently, this Court found that “geographical considerations support[ed] the selection” of B&M, which is located in Philadelphia, and is in close proximity to New York City. *In re: Gold Fixing Antitrust and Commodity Exchange Act Litig.*, No. 1:14-cv-01459-VEC, Dkt. #29 (S.D.N.Y. 2014) at 5. B&M is one of the most respected Pennsylvania law firms, and should be appointed to the Executive Committee to assure that Pennsylvania residents are well represented.

**II. CONCLUSION**

For the foregoing reasons B&M respectfully requests appointment to the Executive Committee.

Dated: July 28, 2014

Berger & Montague, P.C.

By: /s/ Sherrie R. Savett  
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